IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1704

Marjorie Lehman,

Petitioner

– against –

Lycoming County Children's Services, *et al.*,

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

Charles F. Greevy III
29 West Fourth Street
Williamsport, Pennsylvania 17701
(717) 326-6561
Attorney for Respondent
Lycoming County Children's Services

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes:

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 77-1704

MARJORIE LEHMAN,
PETITIONER

vs.

LYCOMING COUNTY CHILDREN'S SERVICES, et al.
RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

The Respondent, Lycoming County Children's Services, respectfully prays that the Writ of Certiorari to the Supreme Court of Pennsylvania, sought by Petitioner, Marjorie Lehman, be denied. The text of the decision of the Pennsylvania Supreme Court is reported as follows: In Re: William L., 383 A.2d 1228 (Pa. 1978), and is set forth at length in Petitioner Marjorie Lehman's petition, Appendix, pages 1a to 67a. The text of the Orphans' Court decision is contained in Petitioner's Appendix, pages 68a to 73a.

COUNTERSTATEMENT OF THE CASE

On June 3rd, 1976, the Lycoming County Orphans' Court entered an Order involuntarily terminating Marjorie Lehman's parental rights to her three (3) sons pursuant to the Pennsylvania Adoption Act of 1970, 1 Pa. Statutes, §311(2) (Lehman Petition, page 3). Petitioner had placed her three (3) boys in the care and custody of the Respondent in June, 1971, when they were respectively 1, 5 and 7 years of age, and they have not resided with her since that time. Petitioner's oldest child Carol, born 9/30/60, has resided with the Petitioner's parents for many years and there is no plan for her return to Marjorie Lehman's home.

After the birth of Petitioner's youngest daughter, Tracie, in September, 1971, Marjorie Lehman, by her own decision chose an apartment in which she still resides, which she acknowledges is not adequate for return of her three (3) boys. Additionally, several Lycoming County Social Service Agencies worked with Marjorie Lehman from January, 1971 through the time of the Orphans' Court hearing in the spring of 1976. These included nutrition aides who were in her home at least monthly for the five (5) year period, stressing and educating her in regards to proper food menus, nutrition guidelines, budgeting, and every-day problems and concerns. (Orphans' Court Transcript hereinafter O.C.T., pages 55 to 59.) The nutrition aides and supervisor stated from their observations that

Marjorie Lehman would not be able to physically or emotionally take care of all of her children (O.C.T., page 58).

There was extensive testimony at the Orphans' Court hearing by Dr. Jacqueline B. Sallade, a psychologist, concerning evaluations that she had done with Marjorie Lehman in January, 1976. Dr. Sallade found that Marjorie Lehman "was socially functioning in terms of self-help skills and independent skills at about the twelve (12) year level, and that intellectually,...at the level of a six (6) year old child." (O.C.T. page 31.) Observation of Marjorie Lehman during times of visitations with her boys, consisted of general havoc or "free-for-alls", and even the older boy acknowledged that his mother could not and would not be able to control the boys' actions. (O.C.T., page 127)

The Orphans' Court terminated the parental rights of the natural mother to the three (3) boys. This decision was affirmed by the Pennsylvania Supreme Court in a wide-ranging review and decision based upon the natural mother's repeated and continued incapacity which could not be remedied, that caused the boys to be without essential parental care or control necessary for their physical and mental well-being. The Pennsylvania Supreme Court recognized the State's constitutional interest in the welfare of a child, and rejected Petitioner's argument that the Pennsylvania statute required a showing of a high and substantial degree

of misconduct. (In re: William L., 383 A.2d at 1236, Petitioner's Appendix page 19a)

ARGUMENT

REASONS FOR DENYING THE WRIT

1. SECTION 311(2) OF THE PENNSYLVANIA ADOPTION ACT IS NOT UNCONSTITUTIONALLY VAGUE NOR DOES IT VIOLATE SUBSTANTIVE DUE PROCESS REQUIREMENTS OF THE FOURTEENTH AMENDMENT.

The Pennsylvania Supreme Court speaking through Justice Samuel J. Roberts, writing for the majority, deals directly with the arguments advanced by Petitioner in the lower and Supreme Court, and in her Writ to this Court. A reading of the Pennsylvania Supreme Court's decision contains the strongest arguments for denial of the Writ of Certiorari prayed for in Marjorie Lehman's petition.

Section 311(2) of the Pennsylvania Adoption Statute allows termination of parental rights for children whose essential needs have not been met, based upon facts as presented showing that the needs cannot or will not be met by a parent. The Pennsylvania Supreme Court deals at length with the manner in which a vague statute may offend the Constitution, as enunciated in the cases of Grayned vs. City of Rockford, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972), and Alsager vs. District Court of Polk City, Iowa, 406 F. Supp. 10 (S. D. Iowa 1975), aff'd in part, 545 F. 2d 1137 (8th Cir. 1976).

(See In re: William L., 383 A.2d at 1232; Lehman Appendix, pages 4a and 5a) The Pennsylvania Statute withstands this vagueness attack.

Justice Roberts specifically excludes the possibility that insufficient notice is present since the parent's inability or unwillingness must be affirmatively demonstrated and the causes be irremediable. (In re: William L., 383 A.2d at 1232-33; Lehman Appendix page 6a and 7a). Secondly, the concern for arbitrary and discriminatory enforcement is negated by a State's right and duty to protect its weaker members, such as infants, and the legislature's policy protecting the family as reflected in the Pennsylvania Juvenile Act as well as the Adoption Act. (Pa. Juvenile Act of 1972, 11 P.S. §50-101; In re: William L., 383 A.2d at 1241; Lehman Appendix, pages 31a and 32a.) The Pennsylvania Court emphasises landmark and recent Supreme Court decisions that a child living in his own home will not be removed, as long as his essential needs are being met. (See In re: William L., 383 A.2d at 1234-35; Lehman Appendix, pages 12a to 15a). Thirdly, the Pennsylvania Court rejected the argument that First Amendment values were violated by the statute, in that the Court is speaking to "essential" and "necessary" needs of the child which are not being met. In re: William L., 383 A.2d at 1234; Lehman Appendix, page 11a; see also, In re: Geiger, 331 A.2d 172, 459 Pa. 636 (1975).

A. A SHOWING OF SERIOUS HARM IS NOT NECESSARY IN THE PENNSYLVANIA TERMINATION STATUTE FOR THE STATE TO INVOKE ITS COMPELLING INTEREST TO PROTECT A CHILD.

Petitioner would require that a state show that serious harm, through a "high and substantial degree of misconduct" by a parent would be necessary prior to the Court ordering termination of parental rights. This argument was specifically submitted and argued before the Pennsylvania Supreme Court. The Court rejected this argument, with due regard to firm Supreme Court decisions, and its own determinations. (See In re: William L., 383 A.2d at 1236-37; Lehman Appendix pages 17a to 19a.) As Justice Roberts points out, "this contention was expressly rejected in In Adoption of R. I., 361 A.2d 294, 468 Pa. 287 (1976)" (In re: William L., 383 A.2d at 1237; Lehman Appendix, page 19a)

The section of the Pennsylvania Statute attacked herein, 1 C.P.S. §311(2), as interpreted by the Pennsylvania Courts allows parental rights to be terminated entirely without regard to usual concepts of willfullness or fault on the part of the parent, and deals with those who cannot care for a child, as well as those who will not. It is well recognized that the responsibility of performing parental duties can be met when reasonable arrangements are made for the temporary care of a child; however, the true test and inquiry of a Court is whether a parent has utilized those resources at her command in overcoming obstacles which temporarily

preclude personal supervision of the child's welfare. In re: Howard, 360 A.2d 184, 468 Pa. 71 (1976); In re: Cassen, 326 A.2d 377, 457 Pa. 525 (1974); McCray Adoption Case, 331 A.2d 652, 460 Pa. 210 (1975).

A closely analogous Court proceeding involving children, is that of primary custody. The Pennsylvania Superior Court has enunciated the different burdens of proof of "best interest" and "clear necessity", and measures these standards with the purposes of the Pennsylvania Juvenile Act in preserving the natural family whenever possible. See Interest of LaRue, 366 A.2d 1271, 244 Pa. Super. 218 (1976); In Interest of Clouse, 368 A.2d 780, 244 Pa. Super. 396 (1976). A Court in a custody matter must look to factors (such as age and mental development of a child, extent and nature of relationship with a parent, extent and degree of relationship with foster parents, and passage of time) necessary to provide for the care and protection, and wholesome mental and physical development of the child, both immediately and in the future. Interest of LaRue, 366 A.2d at 1277, 1278. In this Lehman termination matter, one of the measuring sticks for evaluating the capacity of the mother is the interaction with the boys, especially as shown at the visitations (O.C.T. at pages 29, 67, 77, 79, 81), to assess the vitality and depth of the remaining relationship between the natural mother and each boy.

Based on the foregoing framework of applicable law on the burden of proof and

the factors which enter into an analysis of capacity and control of a natural parent, let us look to the facts adduced at the Orphans' Court Lehman termination hearing. Dr. Sallade, in interpreting the results of the various tests that she gave to the natural mother, questioned her adequacy in basic housekeeping tasks, such as cooking and cleaning, and of her discipline methods. (O.C.T. at pages 33, 34, 46). The mother's functioning level of twelve years, six months, mental age of six years, and ratio IQ of forty-three, (O.C.T. at pages 34, 35) raise serious questions of her maturity to handle a household and family of more than one small child. The Nutrition Aides expressed serious reservations of her ability to handle money (O.C.T. at pages 58, 62, 68, 73), to provide proper health care, as seen by the lice incident (O.C.T. at pages 57, 61, 68), and to take care of all of the children (O.C.T. at pages 58, 70, 71). When discussing the boys, the mother exhibited a lack of knowledge or concern in their present school status and hobbies (O.C.T. at page 106), and of their respective ages and emotional development (O.C.T. at page 107).

The testimony and record in this particular matter reveals that the natural mother, Marjorie Lehman, placed the three (3) boys in the custody of the Children's Service Agency approximately five (5) years before the termination hearings were held in May, 1976; that since the placement, all of the children have remained in the custody of the agency in foster homes; that at the time of the

placement of the three (3) boys, the mother was unable to provide essential parental care and subsistance necessary for their physical and mental well-being; that she has known that better housing and necessity of proper care and control of the boys was essential for their return; that she has been unable to or failed to make progress towards doing so; that the causes of her inability or failure to achieve these goals and standards are primarily her very limited intellectual capabilities, her lack of skills essential to the rearing of the children; a lack of initiative or ability to progress in programs or opportunities which provide such skills; and that she lacks the capacity to even recognize the need of emotional and intellectual stimulation for the boys. Surely, emotional and mental deprivation and injury may be as crippling to a young child in his formative and teenage years as physical abuse and neglect. Herein, lies the crux of the evidence in the Lehman terminations.

The Orphans' Court was dealing specifically with three (3) active and healthy boys, who had been in foster homes for five (5) years, and evidence which showed a lack of parental capacity to deal with the boys' needs, particularly in regards to intellectual or social stimulation. Herein, the evidence points directly to the mother's mental retardation and a physical incapacity to control the boys' behavior. (Lehman Appendix page 72a). The conclusion of the Pennsylvania

Courts based on competent and the compelling weight of the evidence adduced, proves a repeated incapacity and inability to presently or in the future provide essential parental care and control necessary for Frank, William, and Mark Lehman's physical and mental well-being. Respondent urges that under the brief synopsis of the facts recited above, no further review by this Court is warranted or necessary.

Petitioner next argues that the Pennsylvania Supreme Court is advancing a "best interest" approach in upholding the Orphans' Court termination of the parental rights. Petitioner, Gladys Beatty, advanced this same argument in her petition to this Court, to October Term 77-1703. Therein, Respondent argued that both the Orphans' Court and the Pennsylvania Supreme Court found precise grounds for parental rights termination, and did not rely upon the best interest considerations. The line of Pennsylvania termination cases prove that Pennsylvania's Supreme Court has been cognizant that prior to the interest of the children being considered, a definite grounds for involuntary termination must be proven by a preponderance of the evidence. (See In re: Adoption of R. I., Supra; Adoption of Young, 364 A.2d 1307, 469 Pa. 14 (1976); Matter of Kapcsos, 360 A.2d 174, 468 Pa. 50 (1976)). Conversely, several states are considering and Colorado has recently adopted a termination statute stressing, inter alia, a "best interest" factor. (See Colorado's "Parent-Child Legal Relationship Termination Act of

1977", Colo. Rev. Statutes, Ann., §19-11-101, et seq.) This change is through legislative action and is respected by the Pennsylvania Court in our matter. (In re: William L., 383 A.2d at 1236; Lehman Appendix page 18a.) (See also, Alsager, Supra. at 406 F. Supp. at page 19). Respondent urges that the well-reasoned and thorough opinion by the Pennsylvania Supreme Court supports the determination that a compelling state interest was proven to sustain the Lehman terminations.

B. PENNSYLVANIA TERMINATION STANDARD IS NOT VOID FOR VAGUENESS.

Petitioner's allegations that §311(2) of the Pennsylvania Adoption Act is unconstitutionally vague are without merit. The same argument was raised by Petitioner Gladys Beatty in her petition to this Court, to October Term 77-1703, and the Court is referred to the Respondent's arguments contained in its brief in opposition. (See Respondent's Brief in Opposition, 77-1703, pages 9, 10, 11 and cases cited therein.). Further, Justice Roberts analyzed the Pennsylvania statute against this vagueness challenge through appropriate cases and treatises. (In re: William L., 383 A.2d at 1233-34; Lehman Appendix pages 7a to 10a.) Even petitioner acknowledges that some latitude is necessary in a state's interest in protecting its children (Lehman Petition page 13); the question arises in the case-by-case application of those standards. (See Appendix herein, page 22.)

In Grayned vs. City of Rockford, Supra, this Court suggests that standards that may be seen as vague in a statute may be safe from a constitutional challenge if the needed specificity has been supplied by other decisions of a State Supreme Court. This thinking is quoted with favor in Alsager, 406 F. Supp. at 19. This is what the Pennsylvania Supreme Court has done, as specifically set forth in its decision, and even discussing the same cases that troubled Petitioner herein. (Compare Petitioner Lehman's Petition at page 14, with In re: William L., 383 A.2d at 1239, 1240, 1242-43 (footnote 25), 1246; and Lehman Appendix, 27a to 29a, 37a (footnote 25), 38a, 48a, 49a.)

The "high and palpable degree of harm" to children deemed essential for termination in the cases of Adoption of R. I., Supra, In re: Geiger, Supra, and In re: Brandl, 339 A.2d 759, 462 Pa. 181 (1975), were strongly supported by the testimony at the Orphans' Court hearing (Respondent's Argument I-A, Supra), and the thorough review and recital in the majority opinion. The vagueness argument of Petitioner Lehman is overcome, refuted and forms no basis for a Writ of Certiorari to be issued.

C. A STATE IS NOT CONSTITUTIONALLY REQUIRED TO REJECT TERMINATION OF PARENTAL RIGHTS, IF OTHER ALTERNATIVES ARE AVAILABLE, WHEN GROUNDS FOR TERMINATION HAVE BEEN PROVEN.

The Petitioner next argues that even if a parent is shown to be positively and

permanently incapable of meeting the essential needs, both physical and mental, of a child, the state has an obligation to continue the parental relationship, and to provide a less drastic method of caring for the children. This overlooks the increasing Court decisions that hold that parents and children are equal in their right to the satisfaction of a permanent and sustaining family life, and that they are also equal in their rights to life, liberty and the pursuit of happiness. The Petitioner's argument would continue an ill-advised presumption that children are the property of their parents. Justice Roberts, speaking for the majority quoted with favor, Mr. Chief Justice Burger's statement in Wisconsin vs. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972):

> To be sure, the power of the parent even when linked to a free exercise claim, may be subject to limitation...if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burden." Id. 406 U.S. at 233-34, 92 S. Ct. at 1542; see also, Moore vs. City of East Cleveland, Ohio, 431 U.S. 494, 499, 97 S. Ct. 1932, 1936, 52 L. Ed. 2d 531 (1977). In re: William L., 383 A.2d at 1234; Lehman Appendix, page 11a.

The Pennsylvania Court while acknowledging that parental rights must be

accorded significant protection, as interpreted by this Court, also reiterates that these parental rights must yield to a child's essential health and safety needs, and the state may intervene to protect its weaker members, such as infants. (In re: William L., A.2d 1236; Lehman Appendix pages 16a and 17a).

Marjorie Lehman would have this Court sanction a continuing foster placement of all three (3) boys, and in particular Frank, the oldest, rather than have them legally adopted into a stable home setting. Petitioner misstates Frank's status on page 16 of her Petition, in that this oldest boy, was "considered to be unadoptable by the agency"; rather, initial discussions with his foster family at the time of the hearing indicated that they did not feel they personally could adopt Frank at that point (O.C.T. pages 24 and 25).

The caution by which the Pennsylvania Supreme Court approaches its review of termination cases is straightforwardly reflected In re: Brandl, Supra, as the per curiam order therein states:

> "Decree vacated and case remanded for an evidentiary hearing and to make appropriate findings of facts after ascertaining the competency of Dorothy Brandl and to establish a current record and ascertain the preferences of the children..." Id, 339 A.2d at 759; (See also,

Jones Appeal, 297 A.2d 117, 449 Pa. 543 (1972).)

The Pennsylvania Supreme Court, as did the Orphans' Court explored the various alternatives prior to ordering the full termination of Marjorie Lehman's parental rights.

The three (3) Lehman boys were interviewed by the Orphans' Court on the record in May, 1976, and in the presence of the attorney for each party. William, then age 10, and Frank, then age 12, expressed love for their natural mother, but minimal concern that there would be no further visitation if the termination were granted; the youngest, Mark, age 6, appeared to have little or no emotional attachment to his mother. It is difficult to determine whether the expression of the two older boys represents a real desire on their part to maintain a relationship with their natural mother, pointing towards an eventual return; or whether, on the other hand, these expressions represent a grasping on the part of the children to maintain a permanent seat in their family status, a need and desire that could be satisfied by the eventuality of adoption for all of these boys.

The majority opinion acknowledged the continuing efforts by the Respondent-Agency directly in Marjorie Lehman's home, particularly through the nutrition aides, to improve the circumstances of her home and daily needs. In re: William L., 383 A.2d at 1242; Lehman Appendix Page 36a and 37a.

An interesting aspect of this matter is revealed in the discussion in regards to the oldest Lehman Child, Carol (O.C.T. at pages 112 to 114), who has resided with her grandmother since March 20, 1969. This consideration is a very revealing factor in that the natural mother has made no effort to regain custody of her or even to arrange or maintain any visitation with her, although she lives about twelve (12) miles away. Indeed, the natural mother stated at the hearing that she had not seen Carol since Thanksgiving, 1975. (O.C.T. at page 113). This is measured by the realization that visitation with the three (3) boys has been Children Service arranged, scheduled, and regulated, even including transportation and supervision of the visitation in her home. The mother has never been able to provide adequate housing for return of the boys, and has never formally attempted to regain custody of any of the boys. The core question remains whether these three (3) boys should remain in foster care for the balance of their minor lives, or whether the parental rights of the natural mother be terminated so that they can be adopted into a stable and legally recognized relationship.

2. THE WRIT OF CERTIORARI SHOULD BE DENIED IN THAT THERE IS NO GROWING CONFLICT AMONG JURISDICTIONS OF THE CONSTITUTIONAL LIMITS UPON STATES IN TERMINATING PARENTAL RIGHTS.

Petitioner avers a conflict among several states, who are speaking to the

"best interests" of the child rather than supporting basic findings of parental neglect and incapacity. Indeed, Petitioner urges that the Pennsylvania Supreme Court in this case has ignored and applied inconsistently their previous standards. Respondent emphasizes that rather than being in conflict with decisions from other jurisdictions, the Pennsylvania Supreme Court has set forth in detail in its decision the legislative basis and court interpretation appropriate in the Pennsylvania termination decisions. Additionally, there is no legitimate potential for conflicting interpretation of involuntary termination cases when this Court's decisions in the Smith vs. Offer, 53 L. Ed. 2d 14 (1977) and Quillon vs. Walcott, 54 L. Ed. 2d 511 (1978), cases are examined. The "unfitness" necessary is clearly enunciated in the Lehman facts. This particular decision of the Pennsylvania Supreme Court under attack is consistent with previous Pennsylvania termination cases, and in line with the demanding degree of proof necessary. In re: Geiger, Supra. The "compelling state interest" recognized herein is the "state's responsibility to protect its weaker members" and the Pennsylvania Court evaluates this foundation through appropriate United States Supreme Court decisions. (In re: William L., 383 A.2d at 1236; Lehman Appendix 16a. to 18a.)

Two recent cases from other jurisdictions help buttress the decision of the

Pennsylvania Supreme Court in this case. In McGowen vs. State, 558 S. W. 2d 561 (Texas, 1977,), the Texas statute allowing termination was found not violative of due process, when the main allegation against the natural parent was a failure to provide monetary support. Also in the Matter of Prentice, 570 P. 2d 419 (Oregon 1977), there again was no violation of due process guarantees, when the main issue was the mental capacity of the natural mother of a young child in a termination matter. These cases support the interpretation and determination made by the Pennsylvania Supreme Court in this matter. This Court is also referred to the discussion of the Alsager decision contained in Respondent's arguments in opposition to Gladys Beatty's petition. (Respondent's Brief, pages 4 and 5, in Number 77-1703).

As quoted in the Pennsylvania Supreme Court case, a Court must consider a number of factors in determining whether or not parental rights should be terminated. Even its custody and deprivation standards, the primary focus of the Pennsylvania Juvenile Act, (See In re: William L., 383 A.2d at 1240, 1241, and Lehman Appendix at 31a, 32a,) is to preserve the unity of the family, and separate the child from the parent only when necessary for the welfare or in the interest of safety of the child. The Court in considering whether or not parental rights should be terminated, should and in this instance did evaluate what services had been provided to the parent to bring about a reunion with the

children, and the success of the services. As revealed by the Orphans' Court transcript, the same caseworker from the Respondent-agency worked with Marjorie Lehman from the time of the placement of the three (3) boys in June, 1971, up to the termination proceedings in May, 1976. Additionally, nutrition aides worked with the Lehman family from January, 1971, to 1976, and the Petitioner has been legally represented by the same staff of Legal Service attorneys since mid-1974. There can be no legitimate charge that the Agency's motives and actions were circumspect or highly subjective.

The Pennsylvania Supreme Court was fully satisfied that Agency Services were made available over several years to the parent to help remedy the causes of removal, which proved unavailing. In re: William L., 383 A.2d, footnote 5, at pages 1232-33; Lehman Appendix pages 6a-7a. Herein, we are dealing with and evaluating an unmarried natural mother of five (5) children, who is illiterate, uneducated, of very low and limited mental ability, who displays a lack of physical control and discipline over the three (3) boys involved in this Petition. A decisive point in this case is the testimony of the psychologist who directly addressed the mental capacity and several parenting skills of the natural mother. Dr. Sallade, the psychologist, confirmed in January, 1976, the thinking of Ann Russell, the caseworker since June, 1971, and the experiences of the nutrition aides, that the natural mother lacked the

ability to control and to provide for the return of full custody of the boys. We have the fundamental finding of the lower Court that "by reason of her very limited social and intellectual development combined with her five (5) year separation from the children, the mother is incapable of providing minimal care, control and supervision for the three (3) children. Her capacity cannot and will not be remedied." (Lehman Appendix 72a.) The primary purpose of this termination proceeding is for the three (3) boys to be given the opportunity to accept and be accepted into stable and full home environments.

The growing number of foster children is not a product of unwary courts or unexpeditious state agencies, at least not in Pennsylvania. These institutions and throughout the nation, must look to the legislatures for their guidelines and mechanisms, as long recognized by this Court. Maher v. Roe, 432 U.S. 464, 97 S. Ct. 2376, 2385-86, 53 L. Ed. 2d 484 (1977); Missouri, Kansas and Texas Railway Company v. May, 194 U.S. 267, 24 S. Ct. 638, 639, 48 L. Ed. 971 (1904). These termination decisions from the Pennsylvania Court, do not foretell a "growing conflict", but remain on solid judicial and constitutional ground, when placed on the gridwork of the facts presented to the Orphans' Court of Lycoming County, Pennsylvania.

CONCLUSION

IN SUMMARY, it is submitted that sufficient due process procedures and standards have been and can be applied in the proper analysis of grounds of the involuntary termination in this matter, leading to an eventual adoption, to overcome any argument of the constitutionality or vagueness of section 311(2) of the Pennsylvania Adoption Statute, which is not in conflict with decisions from other jurisdictions.

WHEREFORE, Respondent prays that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

Charles F. Greevy, III
29 West Fourth Street
Williamsport, PA 17701
(717) 326-6561

APPENDIX

The Pennsylvania Supreme Court has defined in long-standing cases the obligations of a parent. An oft-quoted case which has application in our matter is that of Smith Adoption, 194 A.2d 919, 412 Pa. 501 (1963), wherein it is stated:

> "Parental rights may not be preserved by complete indifference to the daily needs of a child or by merely waiting for some more suitable financial circumstances or convenient time for the performance of parental duties and responsibilities (while others adequately provide the child with her immediate and continuing physical and emotional needs). The parental obligation is a positive duty and requires affirmative performance which may not be delayed beyond the statutory period by the parent if the parental right is not to be forfeited." Id, 194 A.2d at 922, 412 Pa. at 505. (Emphasis added). (See also Jones Appeal, supra.)

An Orphans' Court case from Somerset County, Pennsylvania, has been cited with approval by the Pennsylvania Supreme Court in several decisions, (In re: Lutheran Children and Family Service of Eastern Pennsylvania, (Appeal of Diane B.), 321 A.2d 618, 456 Pa. 429 (1974); Matter of Kapcsos, supra.) This case of In re: Adoption of J.R.F., 27 Somerset L.J. 298 (1972), states as follows, inter alia:

"Parenthood is not...a mere biological status, or passive state of mind which claims and declines to relinquish ownership of the child. It is an active occupation calling for constant affirmative demonstration of parental love, protection and concern...(A parent) must exert himself to take and maintain a place of importance in the child's life, and must exercise reasonable firmness in declining to yield to obstacles. Otherwise, he cannot perform the job of parent, and the parent-child relationship will deteriorate as the absent parent more and more gives his thoughts, attentions, concern and priorities to his own life and associates." (Emphasis added) In re: Adoption of J.R.F., 27 Somerset L.J. at 304-05. See also In re: Adoption of Orwick, 347 A.2d 677, 464 Pa. 549 (1975).

see

78

1703